

**CHARLOTTE COUNTY PLANNING AND ZONING BOARD**  
**Administration Center, 18500 Murdock Circle, Room 119, Port Charlotte, Florida**  
**Minutes of Regular Meeting**  
**July 8, 2013 @ 1:30 p.m.**

**Call to Order**

**Chair Hess** called the meeting to order at 1:30 p.m. and upon the Secretary calling the roll, it was noted a quorum was present.

**Roll Call**

**PRESENT**

Paula Hess  
Michael Gravesen  
Steven Vieira  
John Mahshie

**ABSENT**

Paul Bigness

**ATTENDING**

Ty Harris, Assistant County Attorney  
Gayle Moore, Recording Secretary

**APPROVAL OF MINUTES**

The minutes of June 10, 2013 were approved as circulated.

**ANNOUNCEMENTS**

*None.*

**PETITIONS**

**Manasota and Sandpiper Key  
Zoning and Overlay Code**

**Legislative**

**Commission District III**

An Ordinance of the Board of County Commissioners of Charlotte County, Florida, amending Section 3-9-53, Chapter 3-9, Article II, District Regulations; providing for revised definitions, establishment, intent, boundary, conflict with other ordinances, zoning district use and development standards, site design standards, architectural standards, pile driving standards and sign standards; providing for severability; and providing an effective date.

**Staff Presentation**

**Shaun Cullinan, Planning and Zoning Official**, commented on the basis for the changes to Section 3-9-53, Manasota and Sandpiper Key Zoning Overlay, which were created by the Manasota and Sandpiper Key Advisory Committee during the same time period County staff has been working on the Land Development Code update, and which have been brought forward separately at the request of the Commission. He noted that staff had reviewed the document, made formatting edits where necessary to make this section conform to the larger Code. The authors of the document are available to answer questions regarding their new code provisions.

**Questions for Staff**

**Chair Hess** noted that much work had evidently gone into the work; asked other Board members if they had questions; there were none.

*Minutes of Regular Meeting* Continued***July 8, 2013 @ 1:30 P.M.***

These minutes have been approved by the Charlotte County Planning and Zoning Board.

**Mr. Cullinan** noted that he had two caveats regarding items staff finds questionable as to legality; these were with regard to pile-driving vs. auguring, and the side-yard setbacks on nonconforming lots. He noted that an overlay code is not considered the appropriate place to address the matter of pile-driving vs. auguring, as this is a matter addressed within the Florida Building Code. On the second issue, staff is of the opinion that these standards should reflect the standard County Code, while the Advisory Committee believes the setback should be ten feet, as it is for other lots on the Key. These two items represent the only points of disagreement between staff and the Committee. Code revisions concerning pile driving start on page 34; setbacks are mentioned throughout the document. County standards for setbacks on nonconforming lots of 50 feet or less in width is 10% of the lot width not to be less than five feet.

**Public Input**

**Mr. Wayne Largent, Chairman of the Manasota-Sandpiper Key Advisory Committee** made a presentation in support of the petition, citing the coming economic recovery as the main driver for having this segment of the Code adopted in advance of the larger Code which is still in the revision process.

**Mr. Largent** spoke to the issue of pile-driving vs. auguring, noting the Committee wanted to completely disallow pile-driving as an option, but were informed they could not as it was an accepted building technique; instead, they came up with the extensive regulations to govern it. As to whether it should be in some other part of the Code as Mr. Cullinan said, **Mr. Largent** indicated he couldn't speak to that issue.

**Chair Hess** asked that he state the objection to pile-driving – whether it concerned the noise, possible environmental effects or something else. Mr. Largent indicated that the noise was an issue, as well the environmental impact on the island; it is a disrupted practice which Committee members are not sure is environmentally sound given the substructure under the Key. **Chair Hess** asked if they had any studies or evidence it would affect islands more so than it would affect any other part of the County, but **Mr. Largent** said he did not have any evidence. They agreed that the noise issue was indisputable. **Chair Hess** asked about his personal experience with pile driving for construction, how long it lasted, and things of that nature; **Mr. Largent** said that the most recent example took place right outside his condo complex, it went on for 2-3 weeks, and it caused cracks in the block wall of his complex and was very disruptive. **Chair Hess** noted that, in her experience, pile-driving was a better technique for hurricane-hardiness construction, and asked if that was his understanding as well. **Mr. Largent** said that builders who had advised the Committee member or two had said that auguring was better. **Mr. Mahshie** asked if there was a big cost difference in the two methods; **Mr. Largent** stated he did not know.

**Chair Hess** addressed Mr. Cullinan again about his objections to having this issue addressed in the overlay code, and asked him to elaborate; **Mr. Cullinan** said an overlay is typically concerned with design standards; construction methods are more properly addressed in the Florida Building Code. Staff has no objection to leaving the language in the overlay as a 'placeholder' while they investigate the appropriate way to handle it.

**Mr. Cullinan** also indicated that the proposed regulations on pile-driving raise legal issues; would the County simply be a 'keeper of documents' associated with these regulations, or whether there would be County liability introduced, and this is something that the County Attorney's office would need to speak to.

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**Mr. Cullinan** also indicated that he had spoken with Plans Examiners in Sarasota County and they indicate they rely on whatever the engineer or architect of record recommend, and both methods are used. In the event of damage arising out of a given method, that is considered a civil matter, and is handled appropriately. The cost might be slightly higher for auguring, but auguring might also be quicker, so that's a 'wash'.

**Mr. Mahshie** asked why the County would be liable for damages; **Assistant County Attorney Josh Moyer** answered, saying that the documentation required by the proposed regulation is extensive, and the County would be put in the position of tracking of all that minutiae and would thereby become responsible ensuring the accuracy of all documentation for the project and, ultimately, could be involved in any civil suit that might arise out of a claim for damages.

**Assistant County Attorney Ty Harris** weighed in with the same concern; how can the County limit itself to the role of custodian of records and not become party to the suit, if a suit occurs; the law is unsettled as to what our position would be in terms of liability. **Mr. Harris** also noted that he has found another county that put restrictions on pile-driving into a zoning code overlay; getting a change in the building code is a much more onerous process. But ultimately, it belongs in building code. **Mr. Vieira** asked if proximity can be limited for pile-driving; **Mr. Cullinan** responded that because the island is so highly developed at this point, there's virtually no place left to build where you wouldn't impact another structure. **Chair Hess** asked what restrictions against pile-driving exist now in the Building Code; **Mr. Cullinan** responded that there was nothing restricting it at this time. **Chair Hess** also asked for clarification on what is meant by "a placeholder"? **Mr. Cullinan** agreed that changing the state's Building code is onerous enough that it might never happen; perhaps people would be induced to do auguring by the mere fact that this issue is mentioned in the Overlay. But we can't outlaw it, because it is an established, accepted method of construction. Further discussion ensued on the difficulty of this situation.

**Mr. Largent** offered more about pile-driving – first, that the Committee was not asking to have it outlawed, and secondly, that these regulatory steps were suggested by Bill Truex as representing builder best practices. **Chair Hess** commented that the concern was about the legal questions, not about the technique.

**Mr. Tom Dignam**, a resident of Manasota Key, and one of the first to build a commercial building using auguring, and everybody nearby the building site was very appreciative. **Mr. Dignam** offered more personal experience regarding damage arising from pile-driving. In response to a question from the Chair, he noted that auguring is more expensive – \$100,00 for pile-driving vs. \$125,000-150,000 for auguring. **Chair Hess** asked who was liable for the damage when it happened; he said the contractor would be liable.

**Mr. Mahshie** asks if there's an objection to have this restriction in the building code, and Mr. Dignam responded that would be fine, but there's no guarantee it would ever get into the Building Code. **Mr. Moyer** clarified that the building code at issue is not the Charlotte County building code, it is the state of Florida building code, so it is out of hands to make that change ourselves, we can only raise the issue with the state. **Chair Hess** asked if staff will follow up with pursuing those changes to the state building code, and **Mr. Cullinan** responded they would do so upon direction from the Commission. **Chair Hess** asked him to clarify, if that initiative was forthcoming and successful, would the language then be removed from the Overlay and he indicated it would.

**Mr. Mahshie** asked whether there could be language in the Overlay that takes away the responsibility of the County; **Mr. Cullinan** recapped the proposed process. **Chair Hess** asked

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who would oversee the process, and **Mr. Cullinan** responded that it would probably be Zoning Division staff. **Chair Hess** asked who would follow up, and **Mr. Cullinan** noted that would be the point where it becomes more difficult and the potential liability arises – is the County just taking in an affidavit saying the steps were followed and that’s the end of the matter, or is it a process where County staff does have to verify – and if we don’t do that, and there is damage, does the County share in any liability.

**Mr. Moyer** added to the explanation a discussion of how this become a question of ‘what is our duty’ under this proposed law. **Mr. Mahshie** asked if staff had a recommendation; Mr. Moyer noted his duty in the matter was to be aware of taking liability onto the County, so from that point of view, the matter should be only between the builder and adjacent residents, not the County; if it becomes evident that this is an issue everywhere else, then it should be addressed in the state building code.

**Ms. Betty Sue Carroll**, resident of Manasota Key, Member of the Advisory Committee, gave some brief history of her involvement in the process. Speaking to the issue of pile driving, **Ms. Carroll** noted that the Key serves a dual purpose as a residential area and a major community beach and tourist attraction; people come here and rent places for their vacation. This is a big revenue creator for the County. If there is pile driving going on during their stay, these vacationers will want their money back.

**Ms. Carroll** spoke next regarding the setbacks: This issue arose during the period of condo building several years ago. It was recognized then that buyers wanted to maximize their lot coverage; she passed around a photo that showed an offending development with no green space on the sides that nonetheless met the Code at that time. There was an outcry among residents at the time about the loss and potential further loss of greenery and the pervious surface that it provides, and without which there are issues including problematic drainage.

Addressing the argument that a requirement for ten-foot side setbacks constitutes a hardship on a nonconforming lot, **Ms. Carroll** stated that this was true if the owner wanted to build a big house on a small lot. She pointed out that under the County’s minimum setback of five feet, this becomes just a space that gets encroached into, by roof overhangs, steps, etc., which go up to the lot line; the Advisory Committee is quite firm on the need for a ten-foot green setback on each side of a 50-foot lot, which they term a “peripheral landscape strip” while agreeing that other parts of the yard should be available at the owner’s discretion for a deck, pool, accessory structures of whatever kind, and this is in response to owner and builder concerns that requiring green in all spaces was too onerous. **Ms. Carroll** distributed a set of four photos to the Board members showing possibilities of buildings built by area architects and builders. Further discussion ensued on the fine points.

**Mr. Cullinan**, reviewing the evolution of the County position, discussed how this code should be applied in the light of legal opinion; that opinion all comes down on the side of using the County’s standard nonconforming lots language. In response to a question from the Chair, **Mr. Harris** stated that the Advisory Committee’s prior code chose the ten-foot setbacks but did not exempt itself out of the County’s nonconforming lots setbacks (though they did specifically exempt themselves from other parts of the County Code). This is important in terms of what controls under Florida case law. The new version of the Code will make this ambiguity go away; **Mr. Cullinan** then expanded on this, noting that same clarification is what will open up the question of possible litigation against the County for ‘taking’ ten feet of buildable property on each side of the lot. **Ms. Carroll** suggested that County staff refers in variance cases to building plans that ‘violate’ the ten-foot landscape buffer, and that this means the County has accepted the buffer. She also referred to a challenge made in 2007 concerning allowable

encroachments, and as a result there was a text amendment to the Code to ensure that nothing can encroach. **Ms. Carroll** reiterated the position of the Advisory Committee that this version of the Code they have crafted is the right thing to do, and that local builders can handle it.

**Mr. Cullinan** then addressed some of her other statements, beginning with height limitations based on NGVD, definition which affects height because it's based on a point under the ground surface; the numbers for height in their code are higher, but their structures are lower because height is tied to NGVD. Elsewhere in the County, he noted, the measurement is based on finished floor elevation. With regard to stormwater retention ponds and what the stormwater requirements are on them, **Mr. Cullinan** pointed out that any new multi-family development goes through Site Plan Review and is required by law to get a SWFWMD permit, which defines the necessary stormwater retention facility. In closing, he noted that the Advisory Committee has conceded a number of items, such as roof overhangs into the setback, but the nonconforming lot set-back issue is still a legal problem in the making.

**Mr. Jack Landis**, a long-time resident of Manasota Key, spoke on two points. First, he noted that the geologic composition of the Key is on coquina rock, so pile driving is at one end reverberates to the other end. Next, referring to Mr. Harris's comment that in the original overlay code "the loop wasn't closed", **Mr. Landis** stated that was drawn by the existing legal department at the time.

**Mr. Joan Dunham-Card**, President of South Manasota Key Sandpiper Key Association, representing of 500+ households of the Association, provided her group's mission statement. She stated that her Association's membership strongly supports the Advisory Committee and the Overlay Code they produced. She also spoke about a survey her group had done, which demonstrated widespread support among residents of the island for the Overlay Code developed by the Advisory Committee. She also quoted from Lorah Steiner in Harborstyle Magazine commenting on the attraction of the "old Florida" look compared to high-rises on the beach. She requested the Board to approve the Code.

**Robert H. Berntsson, Esq.**, had some opposing points of view to present. He began by harkening back to 2004 and the litigation that was prevalent at that time against the Code. Since that time, there has been very little construction. He said that he finds the Code as presented today to be biased against multi-family development. In many respects, it limits the ability for the density the County provides to be used; height and setbacks are the big issues.

In every other part of the County, including the bridgeless barrier island districts which were recent adopted, there is a 35 foot building height limit, and that 35 feet is measured from the finished floor elevation. Under this rule, if FEMA requires your building to be elevated ten feet, the your total building height will be 35 feet over ten feet. Under the proposed Code, there is the 'fallacy' that building height is 52 feet. **Mr. Berntsson** stated that, to his knowledge, the lowest FEMA elevation on the Key is 11 feet on the Bay side and 19 feet on the Gulf side. In addition, the Code as presented doesn't allow anything on the roof, nor does it allow a pitched roof, even though, throughout the County everywhere within 1,200 feet of the waterfront (except for the City of Punta Gorda) there can be a sloped roof and the building height is measured from the finished floor to the middle of the sloped roof, to allow the 35 feet.

Under the Code as presented, the allowance is from NGVD 52 feet; **Mr. Berntsson** questioned why there is a concern with having the building tops all at the same level, and with no pitched roof which results in every building having a squared-off roof line. And so while it sounds as though more height is being proposed, actually height is being taken away.

Depending on where your lot is, you may end up with more height than everyone else in the County; if you are at a FEMA elevation of 11 feet and you build to 52 feet, that will result in 42 feet of building area, but if you are across the street on the Gulf side, you start at a FEMA elevation of 19 feet, you end up with much less than 35 feet in building area. And if it is a multi-family structure that has to have roof access – virtually every one of the multi-family structures on the Key has their equipment (A/C, elevator shaft, etc.) on the roof. That counts toward your height, so now if you have to have a stairway to get to the roof of the building, the top of the stairway (which is typically 8-9 feet) or the top of the elevator shaft (typically ten feet above the floor) counts in total height, and this reduces the building area further. This happens throughout the Key and nowhere else in the County. The type of litigation that took place in 2004 will be rampant when people come back and find out the new rules on redevelopment of their properties.

**Mr. Berntsson** next took up the subject of the setbacks. He congratulated Assistant County Attorney Ty Harris for catching an aspect of this matter that he himself had initially missed, in his interpretation of the side setback issues, and the potential for this being seen as a taking.

**Mr. Berntsson** gave the following example: On a 50-foot wide lot, you have to have ten feet of setback from either side lot line. So you now have 30 feet left; two-fifths (40%) of the property is mandatory open space; you also have to provide an additional 5% of open space when you build, so the total is now 45% open space. But now consider the driveway which has to be 24 feet wide (to allow for two-way traffic) and the minimum size of a parking space is eight feet wide. These add up to 32 feet, but you have only 30 feet to build on of your 50 foot lot. (If you need a handicapped space, which requires 12 feet, this Code does not allow for a paved area for that handicapped space.) The result is that everyone wanted to development multi-family has to apply for a variance.

Compare this to the current Code provision of 10% or 5 foot side setback minimum, **Mr. Berntsson** continued, or look elsewhere in the Code, concerning lots much wider than 50 feet, where there is a 7.5 foot setback. One of the 'bonuses' for building on the Key is said to be that we're not using the building envelope that the rest of the County uses, where you have to build within a 60-degree triangle – that envelope is moved out a little. **Mr. Berntsson** indicated he was not impressed with this "advantage". The Code works well throughout the County, but here where there is the most expensive property in the County, a limitation of the development of that property is imposed, to the detriment of the entire County and its tax base.

**Mr. Berntsson's** following remarks concerned his review of the Code language. He noted that he had marked any page that had some issue or was unclear or difficult to grasp; he held up his copy of the draft to demonstrate the large number of marked pages he ended up with. He then elaborated on a few of his concerns, passing out copies out to the Board members along with pictures showing what current code allows now that would be prohibited if the proposed Code presented today were to be adopted.

Regarding swimming pools, where and how they can be built. Recalling beach houses of his youth in New York, **Mr. Berntsson** mentioned structures which had a pool built into their deck; according to the proposed Code, he said, you could not do that, neither could you locate a pool in the front yard. He noted that aerials of the Key show that on many properties, owners under prior Code had chosen to do exactly that -- e.g., locate a pool in front of the house. **Mr. Berntsson** stated he would be interested in the outcome of a vote taken among the membership after a natural disaster, because while you would retain your density, you could rebuild only to the new code requirements, which he thought would not suit people who currently had these amenities.

**Chair Hess** asked Mr. Berntsson if most of his objections would be met by sticking with existing County standards, and he indicated that the vast majority of them would be. He gave one further example of issues with the composition of the Code, notably where the Code prohibits placing signs "in the roundabout." **Mr. Berntsson** noted that the language suggests that signs would be fine any other place; however, since it is already illegal to place a sign in the County right-of-way, why should there be any language specifying the roundabout.

**Mr. Berntsson** acknowledged the hard work of the Advisory Committee and the time that they spent; however, he noted, they are creating liability for the entire county. He closed by urging the Board to recommend that the Commission adopt the height and setback restrictions that apply everywhere else throughout the County's Waterfront Overlay, and that the proposed Code not be adopted "as is". **Chair Hess** asked about his opinion on pile driving; he stated that he doesn't have a position, as he has no expertise in that area.

**Ms. Andrea Barber**, a member of the Advisory Committee and a local realtor. She stated her opinion that the high value of land on the Key comes from all the work done to preserve the Old Florida feel that this Code is protecting. She also expressed extreme concern about potential traffic problems if people were given any more leeway to build higher buildings. She next expressed doubt about potential legal problems stating that "if things are in black and white" there would be no basis for a suit just because "they aren't getting their way". **Chair Hess** explained the basis in property rights for determining what constitutes a "taking". **The Chair** also pointed out that existing County standards currently do not allow for high-rise buildings anyway; there is no need to be concerned about using County Code, because it is already a very restrictive Code. **Ms. Barber** concluded her remarks by stating "We don't want our Key ruined."

**Ms. Julianne Thomas**, with the Conservancy of Southwest Florida, speaking as a former planner working in the Keys south of Miami for years. **Ms. Thomas** talked about owners' urge to maximize space on small lots; she stated that having different setbacks does not constitute a taking, and pointed out that it commonly takes seven years to get a building permit for property in the Florida Keys and that's not a taking either (it is a matter that has been litigated.) Further discussion ensued between the Chair and Ms. Thomas on the comparison of zoning codes in these two areas, and **Ms. Thomas** clarified her meaning, saying that having different standards should not be confusing to property owners who own the lots, since they should understand what their rights are and what their building footprint is before they buy the land – as long as the rules aren't being changed after they buy, there would be no taking.

**Mr. Landis** returned to the podium to offer a contrary view to that of Mr. Berntsson. He argued against the view that the changes being offered to the code is restricting more than it was originally; Mr. Landis stated it was not more restrictive. Also, to the point Mr. Berntsson made about there being no provision for paving for handicapped folks; yes, it is in there.

**Ms. Carroll** returned to the podium; she offered to run through the major changes regarding what might be open to a Bert Harris challenge and thought only the very recent interpretation of the ten-foot setbacks would; in general, though, all the changes are "in favor of" builders and developers. These changes reduce the need to apply for variances. This version is much less restrictive in many ways than the prior version, as the group worked closely with builders and developers to reach compromises.

- **Mr. Vieira** moved to close the public hearing, second by **Mr. Gravesen** with a unanimous vote.

***Minutes of Regular Meeting*** Continued

***July 8, 2013 @ 1:30 P.M.***

These minutes have been approved by the Charlotte County Planning and Zoning Board.

**Discussion**

**Chair Hess** applauded the efforts of the group and their determination to work for the betterment of their community. She offered comments on those items where she feels the staff has serious reservations on the proposed Code. First, with regard to auguring vs. pile-driving, although there are some issues there where the County could possibly get over-involved, it would be worthwhile to have the language in as a place holder for future action on the state building code. **The Chair** noted that with regard to proposed setbacks on nonconforming lots, the Key should conform to County standards, stating she accepted the argument that there is a question of property rights here, along with other legal issues.

**Mr. Vieira** spoke on the issue of pile driving, referencing language which calls for pilings to augured into the ground; but language in later paragraphs lays out all the additional requirements for a developer that chooses to use pile-driving. Playing devil's advocate, thinking as a builder, **Mr. Vieira** asked: If they are equally acceptable techniques, why does one require all this extra paperwork and assurances?

**Mr. Gravesen**, on the subject of pile driving, stated his belief that construction techniques should not be in overlay code; he also doesn't think much of the idea of a place holders, mostly because no one would think to look for it here. He said that he felt the marketplace will drive which the developer would choose, pile-driving or auguring. From a builder's standpoint, the potential liability from future lawsuits could outweigh the additional cost for auguring, so the problem of choice will probably solve itself. In response, **the Chair** said that she also was not completely sold on placeholdering and she felt Mr. Gravesen had made very good points on the market driven aspect.

With regard to the height limitations, **Mr. Gravesen** commented on changing what their starting point is vs. FEMA, when everybody else in the County uses FEMA. He pointed out that the FEMA standard does not produce buildings that obscure a view, and felt it was reasonable to keep it same as waterfront setback overlay. **Chair Hess** asked what he thought about the side setback question, but he indicated his feelings were variable, depending on the conditions on a given lot.

**Mr. Mahshie** said he felt that the Board should be guided by the County Attorneys and their concern to protect the taxpayers from lawsuits, and that the County standards should apply. **Chair Hess** asked him specifically about the pile-driving section and he said he agreed with letting the market settle that question.

**Recommendation**

**Mr. Gravesen** moved that the revision to the Manasota Sandpiper Key Zoning Overlay, Chapter 3-9, Article II, Section 3-9-53, be forwarded to the Board of County Commissioners with a recommendation of *Approval with the following changes to the Ordinance: On page 34 of the Ordinance, paragraph 6 and sub-paragraphs to be deleted; setback limitations on nonconforming lots be modified to that of the rest of the County ordinances for setbacks; and the building heights be measured by the FEMA level and not by NGVD or NAVD limits, second* by **Mr. Mahshie** and carried by a unanimous vote.

**Excavation and Earthmoving Code**

**Legislative**

**County-wide**

An Ordinance of the Board of County Commissioners of Charlotte County, Florida, amending Chapter 3-5, Article XXIII, Excavation and Earthmoving; providing for revised definitions; providing for revised exemptions; providing for revised general location and operation



*Minutes of Regular Meeting* Continued

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standards; providing for revised Group IV location and operation standards; providing for revised permit application contents; providing for revised listing of department name; providing for revised Group IV permitting processes; providing for conflict with other ordinances; providing for severability; and providing an effective date.

**Staff Presentation**

**Inga Williams, Principal Planner**, commented on the basis in prior hearings for the current changes to Section 3-5, noting that both this Board and the Commissioners in their workshop directed that attention be given to the agricultural exemptions specifically; she noted that the work on the entire Code will continue. There will be two roundtable discussions, one on July 11<sup>th</sup> and the next one on the 30<sup>th</sup> from 2-5 p.m., going over the draft document that had already been brought before the Board. She also noted that Joanne Vernon, Excavation Administrator, is here to answer any questions on the changes proposed at this meeting.

**Questions for Staff**

**Mr. Vieira** noted there's no mention of Sundays in the section on hours of operation; **Ms. Williams** responded that since this is a statement of the allowed hours of operation, the information is limited to stating what those allowable hours are.

**Public Hearing**

**Ms. Deborah Highsmith** commented on the items she supports (that no fill moves off site). Moving on to page 4, line 44, there is language regarding how the County will accept a permit from somewhere else in lieu of science or studies; she argued that the public deserves to actually know what their permits are based on. She stated that this material is going to be discussed at a roundtable on this Thursday, where a water management district representative will be speaking, and suggested that it would be premature to decide on this subject before that meeting. **Ms. Highsmith** then moved on to speak about standards and procedures in the Lee County code for an example of how these issues could better be handled. She suggested that both Lee County and SWFWMD should be part of the roundtables in order to get their input, to better understand the basis for these approvals. **Ms. Vernon** responded that staff had received BCC direction to get this done, and she is comfortable with the approach.

The next matter for discussion was exemptions based on the size of ponds and changes in depth. **Ms. Highsmith** focused on the size of the ponds and amount of material removed, asking how – without oversight from the County – one can be sure it is being dug properly when the work is exempt from review. With regard to the new standards being proposed for the size and depth of exempt farm ponds, **Ms. Highsmith** stated she felt this necessitates more rigorous standards, and referred to a section of the proposed Code regarding soil borings, which are essential to determine where the confining layer is. But while she supports this part, she notes that Lee County adds more; they require deep lake management plans and lake maintenance plans, whether the pond is exempt or not. Saying that these plans don't seem necessary without having any input from experts as to why the plans are put into effect doesn't seem like a good approach. Another thing missing from the Charlotte County standards, which Lee County includes in their Code, regards dewatering during a dig, particularly in sensitive areas. Finally, **Ms. Highsmith** mentioned the difference in bank slopes between what is allowed in Lee County (6:1) and what is allowed in the Charlotte County proposed code (4:1).

**Chair Hess** questioned staff as to whether they had reviewed Lee County standards when preparing the draft code; **Ms. Vernon** responded, noting that a number of the concerns being raised are scheduled to be discussed at the upcoming roundtable meetings, and may or may not be part of the next revision. Regarding the Lake Management and Lake Maintenance plans **Chair Hess** reviewed the outstanding questions, particularly concerning there being no

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oversight on exempt operations; **Ms. Vernon** noted that these are the same as SWFWMD, and the direction from the Commission was to make ours equal to theirs; also, the operation still has to apply for a permit to have an exempt pond, and submit evidence that they are not going into the confining layer. **Ms. Williams** pointed out that the exemption is established through an application process, during which a site plan and other information is required to be submitted. Additionally, the operation gets reviewed at the end of the project.

**Ms. Highsmith** next raised the issue of hours of operation, saying she supported this part; but she noted that Federal holidays have been removed from the Code. Chair Hess noted that such operations were located on very large ag tracts, and wondered why it would be a problem if someone operated on a holiday; **Ms. Highsmith** responded, why then would Sunday be an issue? She said that she had listened to minutes of ANRAC meeting from March where they were discussion operations, and she doesn't know who was talking but they were talking about operating 24/7 regardless of the code, which calls into question their credibility. **Chair Hess** asked if she was suggested the County have a watchman at these project, noting that if someone calls and complains about the activity, then the County will act. **Ms. Vernon** clarified that the restriction on holidays was never in the Code, they were in proposed the proposed revision to the Code, which is still an open matter, being discussed in the upcoming roundtable meetings.

Finally, regarding the standards on Waivers for Reduced Setbacks, **Ms. Highsmith** again referred to the minutes of ANRAC meeting during which she said she had heard comments about buying off residents, which she found shocking giving it was an open, recorded meeting with a sitting commissioner in the room. In closing comments, she said she made a great effort to study the materials available, and to understand what the water management districts are requiring and why different jurisdictions do things differently; she said she felt we owe it to ourselves to have a similar understanding before recommending approval on something. She urged postponement of moving this forward until these sorts of questions can be answered, by including water management district representatives in the roundtable meetings. **Chair Hess** noted that this process is holding up the wheels a progress on some agricultural operations; **Ms. Highsmith** responded that it was only one operation that was being impeded, one person who wants a bigger pond which she likened to spot zoning. **Chair Hess** quoted attorney Geri Waksler regarding who should be able to tell you how big a pond you can have on your land, noting that there were other issues here. **Mr. Mahshie** characterized this as being perhaps just one pond but also one company trying to make it, being stomped out; **Ms. Highsmith** objected to that characterization, noting all the operation was being required to do was apply for the exemption.

**Robert H. Berntsson, Esq.** spoke to the issue of referring to Lee County's approach, noting that they allow 12-story condos, and we wouldn't want to duplicate that. Additionally, he stated that there's no evidence that SWFWMD is doing a bad job; why should we duplicate their effort. He also stated his opinion that 'we should all be pushing this along' because SWFWMD is actively trying to get away from AG using groundwater and move to surface water; we should be helping, not holding it up. He urged the Board to move the matter forward.

- **Mr. Gravesen** moved to close the public hearing, second by **Mr. Mahshie** with a unanimous vote.

**Discussion**

**Chair Hess** noted that the Board had sent the prior code back, but had advocated for this part coming on separately; she found no problem with it. **Mr. Vieira** had a question regarding proposed excavations at least 1,000 feet from residential or institutional structures, and asked

***Minutes of Regular Meeting*** Continued

***July 8, 2013 @ 1:30 P.M.***

These minutes have been approved by the Charlotte County Planning and Zoning Board.

if a public hearing was required for this? **Ms. Williams** responded that if it was a small scale Group IV, it would just go to the Excavation Administrator; a large scale would go to the Hearing Examiner for approval.

**Recommendation**

**Mr. Gravesen** moved that the revisions to Chapter 3-5, Art XXIII, Excavation and Earthmoving Ordinance modifications to exempt agricultural lands, be forwarded to the Board of County Commissioners with a recommendation of *Approval*, second by **Mr. Mahshie** and carried by a unanimous vote.

**SV-13-05-02**

**Legislative**

**Commission District I**

Tim Thompson has applied to vacate a portion of the unnamed alley that runs between Broadpoint Drive and Foley Drive (platted Wheeler Court), located east of Foley Drive, south of Del Prado Parkway, and west of Broadpoint Drive, a total of 0.13 acres, more or less, in Sections 15 and 22, Township 40, Range 23, in Harbour Heights Section 5 Subdivision, as recorded in Plat Book 3, Page 81B, of the Official Records of Charlotte County, Florida, in Commission District I.

**Staff Presentation**

**Steven Ellis, Planner II**, presented the findings and analysis of the petition with a recommendation of *Approval*, based on the reasons stated in the staff report dated June 20, 2013 and the evidence presented at the public hearing on the application. The applicant is not available today, but his surveyor is present to answer questions, if necessary. **Mr. Ellis** provided details regarding the request; he noted that the existing Code Violation has been cleared up, and therefore the second condition given in the staff report had been eliminated. The survey has been corrected also, so that left just one condition: applicant must provide a utility easement in favor of CenturyLink.

**Questions for Staff**

**Mr. Gravesen**, concerning the encroachment that had been described, asked if this had been the former home of the water department, and mightn't that encroachment have been their work? **Mr. Ellis** agreed this was possibly the case.

**Applicant's Presentation**

**Mr. David Shremshock, Surveyor**, spoke about the work he had done and his assumption that there had been a prior vacation to account for the encroachment; however, there was not prior vacation, and he agrees the encroachment would have been the work of the water plant. He verified that the fence has been moved, and that the final condition will be acceptable.

**Public Input**

None.

- **Mr. Gravesen** moved to close the public hearing, second by **Mr. Mahshie** with a unanimous vote.

**Discussion**

**Chair Hess** noted it seemed reasonable and would support it.

**Recommendation**

**Mr. Vieira** moved application **SV-13-01-01** be forwarded to the Board of County Commissioners with a recommendation of *Approval*, based on the findings and analysis in the

***Minutes of Regular Meeting*** Continued

**July 8, 2013 @ 1:30 P.M.**

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staff report dated June 20, 2013, along with the evidence presented at today's meeting, second by **Mr. Gravesen** and carried by a unanimous vote.

**Mr. Vieira** advised the Board members that he would not be present in August.

There being no further business to come before the Board, meeting was adjourned at 3:23 p.m.